

**REMARKS****Claim Amendments**

Claims 1, 7, and 13 are amended in the present application to alter the limitation “user’s condition” to “user’s physical condition.” Support for these amendments can be found at page 17, lines 5-14, which states that an “indication of a user’s condition” is a quantifiable aspect of a user’s condition and a quantity measuring the aspect. For example, a quantifiable aspect of a user’s condition is a body temperature of 99.2 degrees Fahrenheit. Examples of quantifiable aspects of a user’s condition include body temperature, heart rate, blood pressure, location, galvanic skin response, and others as will occur to those of skill in the art. As such, Applicants submit that the amendments to the claims of the present application do not introduce new subject matter into the present application.

**Claim Rejections – 35 U.S.C. § 102 over McCarthy**

Claims 1-18 stand rejected under 35 U.S.C. § 102(e) as being anticipated by McCarthy, et al. (U.S. Patent No. 6,904,408) (hereafter, ‘McCarthy’). To anticipate claims under 35 U.S.C. § 102, McCarthy must disclose and enable each and every element and limitation recited in the claims of the present application. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Independent claim 1 of the present application recites:

1. A method for improving the devices in a domain, the method comprising:

receiving, within a network, a plurality of device effectiveness records for a first user created in a first domain, each device effectiveness record including information used to evaluate whether particular actions by respective devices were effective in

affecting a particular physical condition of the first user, the first domain including a first compatible services gateway coupled for data communications to metric sensors that measure indications of the first user's condition, the first compatible services gateway hosting a first domain mediation layer that is a set of services for administering devices based on the measured indications of the first user's condition;

storing the plurality of device effectiveness records;

selecting a device that was effective in affecting the first user's physical condition in dependence upon the plurality of device effectiveness records; and

notifying a second user in a second domain that the selected device was effective in affecting the first user's physical condition to allow the second user to benefit from the effectiveness of the selected device by upgrading the second domain to include a second domain device that matches the selected device.

As explained in more detail below, McCarthy does not disclose and enable each and every element of claim 1. McCarthy therefore does not anticipate the claims of the present application within the meaning of 35 U.S.C. § 102. Applicants respectfully traverse the rejection and request reconsideration of claims 1-18.

**McCarthy Does Not Disclose Receiving, Within A Network,  
A Plurality Of Device Effectiveness Records For A First  
User Created In A First Domain, Each Device Effectiveness  
Record Including Information Used To Evaluate Whether  
Particular Actions By Respective Devices Were Effective In  
Affecting A Particular Physical Condition Of The First User As  
Claimed In The Present Application**

The Office Action takes the position that McCarthy at column 31, lines 1-37, column 34, lines 17-30, column 40, lines 38-53, and column 35, line 50 – column 36, line 8, discloses the following limitation of claim 1: receiving, within a network, a plurality of device effectiveness records for a first user created in a first domain, each device effectiveness record including information used to evaluate whether particular actions by respective devices were effective in affecting a particular physical condition of the first user. Applicants respectfully note in response, however, that what McCarthy at column 31, lines 1-37, actually discloses is:

FIG. 7 included in drawings is a computer system, such as a workstation, personal computer or other processing apparatus in which the client 50 operates a browser 200 or a server 150 may be operative is illustrated in FIG. 8 with a browser, various biosensors and a voice stress analyzer. In a similar manner a web appliance browser, two way email device, minibrowser devices using WAP, wireless application protocol, new 3G wireless standard, or NTT DoCoMo Japanese standard may be a platform for a browser and biosensors and perhaps a voice stress analyzer. A workstation in which one implementation of the present invention may be practiced includes system 300, which comprises a bus or other communication means 301 for communicating information, and a processing means 302 coupled with bus 301 for processing information. System 300 further comprises a random access memory (RAM) or other volatile storage device 304 (referred to as main memory), coupled to bus 301 for storing information and instructions to be executed by processor 302. Arrows such as 67 represent the system bus architecture of computer system 1. However, the bus is illustrative of any interconnection scheme serving to link the subsystems. For example, a local bus could be utilized to connect the central processor to the system memory and the display adapter. A wireless interconnection scheme could link processor display adapter and memory. Main memory 304 also may be used for storing temporary variables or other intermediate information during execution of instructions by processor 302. System 300 also comprises a read only memory (ROM) and/or other static storage device 306 coupled to bus 301 for storing static information and instructions for processor 302, and a data

storage device 307 such as a magnetic disk or optical disk and its corresponding disk drive both fixed and removable. Data storage device 307 is coupled to bus 301 for storing information and instructions. This may be used for storage of the various files to be described here including profiles, indices, temporary cached web information, topics, and files.

And what McCarthy at column 34, lines 17-30, actually discloses is:

FIG. 7 shows a representative database listing of input signals and several psychological and emotional categories that are clustered subsets of signals that may be accumulated as a cluster score for a characteristic subset of viewer with recorded activities or survey questions that put the browser viewer into a class describable as assertive, interactive, fearful, greedy, strong locus of internal control ("I do it my way"). Thus in accordance with the present invention, the neural network combines characteristics of browser user sessions and legacy data, and physiologic signals to recommend ads media and content themes to be shown to viewer. The weighed outputs called eScores are the equivalent to a score for conditions at that are evaluated in terms of leading a sale.

And what McCarthy at column 40, lines 38-53, actually discloses is:

The system continuously refreshes the eScore at every point traversed on the matrix according to what route and how many steps were taken to get to a particular point in the matrix. The database may be maintained that establishes the shortest pathway (most proficient means) for pushing a user from one location in the matrix to another given point. The database may be maintained that establishes the greatest historical likelihood of successful sale. The individual's historical sales record indicates the pathway that succeeded in the past. The choice of best pathway may be made by comparison of an eScore (likelihood of successful sale) for each optional pathway. The system can then make available suitable media in any of several methods pop ups, ad banners, message suggestions, follow-up by postal mail, electronic mail, telephone call. Vendor cooperation is needed to make the database for external follow-up.

And what McCarthy at column 35, line 50 – column 36, line 8, actually discloses is:

The array of BioNet inputs is H Ps E B C Ph G as shown in figure Table 1. Since the system is learning all signals in real time these can change. However the history H, Ps psychological, E emotional, and C cognitive aspects are reached through collection of data made available on a legacy database and will require some stability for reliability when used for

estimation purposes but allow for change as new experiences and routes are charted.

Indicator sources include H for individual history, Ps for psychological compatibility, B for behavioral "motivators", and E for emotional motivators C is for Cognitive G is for gesture recognition, that are combined as a weighted collection of factors called the Escore. Escore is used to indicate the affinity of a viewer for materials that have been shown and can be an indication of the likelihood of making an order for material or purchasing goods software (computer programs, photographs greeting cards, literature, or reading materials), H individual history included at website, previous web pages viewed link source, number of times viewed, number of links or layers entered, where on hierarchies present context (state 1 introductory viewing 2 information gathering or 3 end stage loading shopping basket) in the prebuying stages), past purchases made, and stated viewer preferences personal profiles or commonly assigned profiles built using demographics of like consumers of the particular product if no profile is available.

That is, McCarthy, both generally and in the cited sections, discloses a BioNet method for delivering personalized web content to a web browser in response to characteristics of browser user sessions, legacy data, and physiological signals. The characteristics of browser user sessions, legacy data, and physiologic signals are used to recommend ads, media, and content to be delivered to the browser. That is, McCarty is concerned with delivering, to a single user across a single network to a single browser, personalized content for the user. McCarthy's BioNet method for delivering personalized web content to a web browser does not disclose receiving, within a network, a plurality of device effectiveness records for a first user created in a first domain, each device effectiveness record including information used to evaluate whether particular actions by respective devices were effective in affecting a particular condition of the first user as claimed in the present application for two reasons. First, McCarthy does not disclose devices that affect a particular physical condition of a user. Second, McCarthy does not disclose a domain as claimed in the present application.

McCarthy does not anticipate claim 1 of the present application because McCarthy does not disclose devices that affect a particular physical condition of a user as claimed here. The present application describes a user's physical condition to include, for example, the

user's body temperature, heart rate, blood pressure, location, galvanic skin response, and others as will occur to those of skill in the art. See, Applicants' original specification at page 17, lines 9-14. According to the claims of the present application, a device affects such a physical condition of a user. In contrast to the claims of the present application, McCarthy merely discloses delivering personalized web content to a web browser that in no way affects a user's physical condition. That is, McCarthy only discloses a system in which the content of a web browser is affected – not a device which affects the physical condition of a user. As such, McCarthy does not disclose claim 1 of the present application.

In addition to the fact that McCarthy does not disclose devices that affect a particular physical condition of a user, McCarthy also fails to disclose claim 1 of the present application because McCarthy does not disclose a domain as claimed in the present application. The present application claims a domain that includes a compatible services gateway coupled for data communications to metric sensors that measure indications of a user's condition and a set of services for administering devices based on the measured indications of the first user's condition. In contrast to claim 1 of the present application, McCarthy merely discloses a computer system, such as a workstation, personal computer or other processing apparatus in which the client operates a browser. In rejecting claim 1 of the present application, the Office Action explicitly points to "mediation layer 50 of fig. 9" as disclosing the limitation recited above. Applicants respectfully note in response, however, that reference character 50 in figure 9 of McCarthy is a client that McCarthy describes as a browser client on a PC, Palm, or other wireless device. McCarthy does not disclose, however, that such a client is a domain that includes a compatible services gateway coupled for data communications to metric sensors that measure indications of a user's condition and a set of services for administering devices based on the measured indications of the first user's condition as claimed here. Because McCarthy does not disclose each and every element and limitation of Applicants' claims, McCarthy does not anticipate Applicants' claims, and the rejections under 35 U.S.C. § 102 should be withdrawn.

**McCarthy Does Not Enable Each and Every Element  
Of The Claims Of The Present Application**

Not only must McCarthy disclose each and every element of the claims of the present application within the meaning of *Verdegaal* in order to anticipate Applicants' claims, but also McCarthy must be an enabling disclosure of each and every element of the claims of the present application within the meaning of *In re Hoeksema*. In *Hoeksema*, the claims were rejected because an earlier patent disclosed a structural similarity to the Applicant's chemical compound. The court in *Hoeksema* stated: "We think it is sound law, consistent with the public policy underlying our patent law, that before any publication can amount to a statutory bar to the grant of a patent, its disclosure must be such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention." *In re Hoeksema*, 399 F.2d 269, 273, 158 USPQ 596, 600 (CCPA 1968). The meaning of *Hoeksema* for the present case is that unless McCarthy places Applicants' claims in the possession of a person of ordinary skill in the art, McCarthy is legally insufficient to anticipate Applicants' claims under 35 U.S.C. § 102. As explained above, McCarthy does not disclose each and every element and limitation of independent claim 1 of the present application. Because McCarthy does not disclose each and every element and limitation of the independent claims, McCarthy cannot possibly place the elements and limitations of the independent claims in the possession of a person of ordinary skill in the art. McCarthy cannot, therefore, anticipate claim 1 of the present application.

**Relations Among Claims**

Independent claims 7 and 13 are system and computer program product claims, respectively, for improving the devices in a domain corresponding to independent method claim 1 that include "means for" and "means, recorded on [a] recording medium, for" improving the devices in a domain. Claim 1 is allowable for the reasons set forth above. Claims 7 and 13 are allowable for the same reasons that claim 1 is allowable. The

rejections of claims 7 and 13 therefore should be withdrawn, and claims 7 and 13 should be allowed.

Claims 2-6, 8-12, and 14-18 depend respectively from independent claims 1, 7, and 13. Each dependent claim includes all of the limitations of the independent claim from which it depends. Because McCarthy does not disclose each and every element of the independent claims, McCarthy does not disclose each and every element of the dependent claims of the present application. As such, the rejections of claims 2-6, 8-12, and 14-18 should also be withdrawn, and the claims should be allowed.

### Conclusion

The Commissioner is hereby authorized to charge or credit Deposit Account No. 09-0447 for any fees required or overpaid.

Respectfully submitted,



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